



Santa Clara Law Review

Volume 11 | Number 2

Article 12

1-1-1971

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Robert H. Harmssen

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Recommended Citation

Robert H. Harmssen, Comment, *Governmental Compensation for Riot Victims*, 11 SANTA CLARA LAWYER 415 (1971).
Available at: <http://digitalcommons.law.scu.edu/lawreview/vol11/iss2/12>

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GOVERNMENTAL COMPENSATION FOR RIOT VICTIMS

The tremendous increase in civil disorders and riots over the last few years has sharpened the nation's focus on riot damages.¹ Businessmen and home owners in many areas of our country have suffered millions of dollars in losses at the hands of angry mobs.² The national news media has reported the spiraling frequency of riotous activity and the accompanying wake of personal injury and property damage.³ In response to this growing concern, governmental inquiries have examined the expanding arena of civil disorders throughout the country.⁴ This comment will re-examine the role of the federal, state and local governments in the protection of California citizens against losses caused by riots.

STATUS OF CURRENT LAW

Statutes in a large number of states create county and city liability for damages suffered as a result of civil disorders.⁵ A few riot recovery statutes allow recovery for personal injury,⁶ while the greater number impose liability exclusively for property damage.⁷ Because there is no common law right of recovery for damages caused by mob violence,⁸ municipalities are liable only where

¹ See, e.g., WALL STREET JOURNAL, Aug. 31, 1967, at 1, col. 6. This article discusses the problem of who should pay for riot losses and reports the fact that many states in our nation have laws which make local governments liable for riot losses.

² THE PRESIDENT'S NATIONAL ADVISORY PANEL ON INSURANCE IN RIOT-AFFECTED AREAS. Hearings: Nov. 8 & 9, 1967, 159, 188-94.

³ See, e.g., NEWSWEEK, Aug. 30, 1965 at 13. This article discusses the spiraling cost of riot losses.

⁴ See note 2 *supra*. See also *Major Riots, Civil-Criminal Disorders*, in PERMANENT SUBCOMM. ON INVESTIGATIONS OF THE U.S. SEN. COMM. ON GOV. OPERATIONS, RIOTS, CIVIL AND CRIMINAL DISORDERS, 90th Cong., 1st Sess. 15 (1967).

⁵ CONN. GEN. STAT. § 7-108 (1958); KAN. GEN. STAT. ANN. § 12-203 (Supp. 1968); KY. REV. STAT. ANN. § 411.100 (1942); ME. REV. STAT. ANN. tit. 17, § 3354 (1964); MD. ANN. CODE art. 82, §§ 1-3 (1957); MASS. ANN. LAWS ch. 269, § 8 (1958); MO. REV. STAT. § 537-150 (1949); MONT. REV. CODES ANN. § 11-1503 (1947); N.J. STAT. ANN. §§ 2A:48-1 to 2A:48-7 (1968); OHIO REV. CODE ANN. §§ 3761.01-3761.11 (Supp. 1970); PA. STAT. ANN. tit. 16, § 11821 (1965); R.I. GEN. LAWS ANN. § 45-15-13 (1956); S.C. CODE ANN. § 16-107 (1952); W. VA. CODE § 61-6-12 (1966); WIS. STAT. § 66.091 (1970).

⁶ CONN. GEN. STAT. § 7-108 (1958); KAN. GEN. STAT. ANN. § 12-203 (Supp. 1968); OHIO REV. CODE ANN. § 3761.08 (Supp. 1970); W. VA. CODE § 61-6-12 (1966); WIS. STAT. ANN. § 66.091 (1970).

⁷ ME. REV. STAT. ANN. tit. 17, § 3354 (1964); MD. ANN. CODE art. 82, §§ 1-3 (1957); MASS. ANN. LAWS ch. 269, § 8 (1958); MO. ANN. STAT. § 537-150 (1949); MONT. REV. CODE ANN. § 11-1503 (1947); PA. STAT. ANN. tit. 16 § 11821 (1965); R.I. GEN. LAWS ANN. § 45-15-13 (1956); S.C. CODE ANN. § 16-107 (1952).

⁸ 38 AM. JUR., *Municipal Corporations* § 652 (1941). Here it is stated that it is

statutory provisions create such liability.⁹ Such statutes have generally been upheld by the courts as a reasonable exercise of the police power.¹⁰ Moreover, the courts have strictly construed such riot statutes where they allow recovery for personal injury¹¹ and liberally construed them where only property damages are recoverable.¹²

The purpose of these riot recovery statutes is based essentially upon the theoretical principles of protecting innocent citizens from catastrophic loss and encouraging public officials to maintain the highest degree of lawful order in the community. While the purposes of these statutes are similar, there are some technical distinctions worth noting. For example, of the riot statutes now in effect, only those of Connecticut, Kansas and Wisconsin allow recovery for both personal injury and property damages.¹³ Statutes in Maryland, Kentucky and Connecticut bar recovery where the resulting damage could not have been prevented through reasonable diligence by local authorities.¹⁴ In other states, the courts have held that riot statutes apply only to property which is damaged or destroyed, and not to property which is stolen because this merely represents an interference with a "possessory right."¹⁵ Other distinctions among riot

well settled law that a municipality is not liable for damages resulting from mob violence in the absence of statutory provision creating such liability.

⁹ In *City of Chicago v. Sturges*, 222 U.S. 313 (1911), the court upheld as constitutional a statute which made local government entities liable for riot losses. Here the court indicates that it is a familiar common law rule that a state which creates subordinate municipal governments and vests in them police powers essential to the preservation of law and order may impose upon them a duty of protecting property from mob violence and hold them liable for loss caused by such violence.

¹⁰ But see *Kelly v. Beckman*, 13 Ohio Misc. 219, 234 N.E.2d 624 (1967), and *Parker v. Board of County Comm'rs*, 15 Ohio App. 2d 77, 239 N.E.2d 127 (1968). In *Kelly v. Beckman*, the court states that it was not enough to show simply an injury resulting from an unlawful assemblage of persons. In order to recover there must also appear a purpose of exercising correctional power by violence without authority of law. If it were not so, stated the court, then the Ohio statute would be unconstitutional.

¹¹ See, e.g., *Hailey v. City of Newark*, 22 N.J. Misc. 139, 36 A.2d 210 (1944); *Lexa v. Zmunt*, 123 Ohio St. 510, 176 N.E. 82 (1931); *Lanham v. City of Buckhannon*, 97 W. Va. 339, 125 S.E. 157 (1924); *Landesman v. Board of County Comm'rs*, 9 Ohio App. 2d 319, 224 N.E.2d 532 (1967).

¹² See, e.g., *Roy v. Hampton*, 108 N.H. 51, 226 A.2d 870 (1967); *Yalenezian v. City of Boston*, 238 Mass. 538, 131 N.E. 220 (1921); *Marshall v. City of Buffalo*, 50 App. Div. 149, 64 N.Y.S. 411 (1900).

¹³ The following statutes allow for both personal injury and property damage recovery: CONN. GEN. STAT. ANN. ch. 97 § 7-108 (1960); KAN. STAT. ANN. § 12-203 (Supp. 1968); WIS. STAT. ANN. ch. 66, § 66.091 (1965).

¹⁴ CONN. GEN. STAT. § 7-108 (1958); KY. REV. STAT. ANN. § 411.100 (1963); MD. ANN. CODE art. 82 §§ 1-3 (1957). *Contra*, *Palmer v. City of Concord*, 48 N.H. 211 (1868). Here the issue before the court was whether the riot victim had given the local authorities notice of the impending danger to his property. The court held that such notice was not necessary and that it was no defense to show that the town could not have prevented the destruction of the property, or that none of the rioters were citizens of the town.

¹⁵ In *Yalenezian v. City of Boston*, 238 Mass. 538, 131 N.E. 220 (1921), the

recovery statutes appear in the various definitions of the terms "mob" and "riot."¹⁶ In fact, a few states seek to avoid confusion in this respect by employing numerical definitions.¹⁷

Despite technical variations which occasionally lead to unusual court decisions,¹⁸ most riot recovery statutes are substantially similar to the California statute which was repealed in 1963¹⁹ just two years before the Watts riot in Los Angeles.²⁰ The California statute basically provided that a local agency is strictly liable for damages caused by riots;²¹ that in order to recover, a plaintiff must not be contributorily negligent;²² and that an action to recover for riot damages must be commenced within one year after the riot.²³ Unfortunately, this riot liability statute was repealed in 1963 due to the impact²⁴ of the *Muskopf* and *Lipman* cases decided by the

court distinguished property which is physically damaged from property which is stolen during a riot and determined that stolen property was not damaged and thus not covered by the state's riot statute. *Accord*, *Goldman v. Forcier*, 68 R.I. 291, 27 A.2d 340 (1942).

¹⁶ In *Koska v. Kansas City*, 123 Kan. 362, 255 P. 57 (1927), the court stated that the term "mob" was not a strictly legal term and was practically synonymous with "riot." In *Landesman v. Board of County Comm'rs*, 9 Ohio App. 2d 319, 224 N.E.2d 532 (1967), the court stated that for purposes of the riot recovery statute, the term "mob" was not to be used in its generic sense.

¹⁷ In *Aron v. City of Wausau*, 98 Wis. 592, 74 N.W. 354 (1898), the court said that three persons were necessary to constitute a "mob" or "riot" under the state riot statute. In *Hibbs v. City of Wichita*, 176 Kan. 529, 271 P.2d 791 (1954), the court stated that five persons was the statutory minimum number of persons needed to constitute a "mob."

¹⁸ *E.g.*, *Moore v. City of Wichita*, 196 Kan. 636, 189 P. 372 (1920). Here off duty police officers broke into plaintiff's house without a warrant, searched the premises, physically injured the plaintiff and caused property damage. The court determined that such illegal police actions were within the scope of the state's riot statute.

¹⁹ CAL. GOV'T CODE §§ 50140-45 (West 1954), *repealed*, CAL. STATS. 1963 ch. 1681 § 18, at 3266 (1963) [hereinafter referred to as the riot recovery statute] provided that a local agency is strictly liable for riot damages within its boundaries; that an action for recovery be commenced within one year after the commission of the act complained of; that a plaintiff must not be contributorily negligent; that payment of riot losses shall be paid by issuance of a warrant; and that the prosecution of rioters is the duty of the Attorney General of California.

²⁰ The Watts riot in 1965 alone caused millions of dollars in property damage and great human suffering. It was reported that 36 people died in the Watts rioting and that nearly 900 were injured. Additionally, more than 4,000 persons were arrested and estimates of property damage were set at 200 million dollars. *See* note 3 *supra*.

²¹ CAL. GOV'T CODE § 50140 (West 1954), *repealed*, CAL. STATS. 1963 ch. 1681 § 18, at 3266 (1963).

²² CAL. GOV'T CODE § 50142 (West 1954), *repealed*, CAL. STATS. 1963 ch. 1681 § 18, at 3266 (1963).

²³ CAL. GOV'T CODE § 50141 (West 1954), *repealed*, CAL. STATS. 1963 ch. 1681 § 18, at 3266 (1963).

²⁴ The California Law Revision Commission in its study of the impact of the *Muskopf v. Corning Hosp. Dist.*, 55 Cal. 2d 211, 359 P.2d 457 (1961), case recommended sweeping legislative changes. For an extended discussion of these recommended changes see 4 CAL. LAW REVISION COMM'N REPORTS, RECOMMENDATIONS & STUDIES 834-85 (1963).

California Supreme Court in January of 1961.²⁵ Prior to these decisions, the doctrine of sovereign immunity protected governmental entities against civil liability, except where statutory provisions specifically imposed such liability. However, the *Muskopf* case decided that this doctrine of sovereign immunity was "mistaken and unjust,"²⁶ and that liability was to become the general rule. Thus, California's riot statute, which was originally designed²⁷ as a statutory waiver of government immunity, became a statutory provision operating in a general scheme of government liability. Unfortunately, the California Law Revision Commission, in its review of legislation affected by the *Muskopf* decision, viewed the riot statute as an "anachronism of modern law" and recommended its repeal.²⁸

EFFECT OF REPEAL ON CALIFORNIA LAW

The repeal of California's riot recovery statute left thousands of citizens without an effective avenue of recovery against riot losses. Owing to the fact that civil disorders in California and elsewhere are increasing, the repeal of the riot statute was misconceived and contrary to the spirit of *Muskopf*.²⁹ Moreover, the legislature, at the time of the riot statute's repeal, enacted new laws³⁰ which made riot recovery against governmental entities virtually impossible. These

²⁵ *Muskopf v. Corning Hosp. Dist.*, 55 Cal. 2d 211, 359 P.2d 457, 11 Cal. Rptr. 89 (1961), and *Lipman v. Brisbane Elementary School District*, 55 Cal. 2d 244, 359 P.2d 465, 11 Cal. Rptr. 94 (1961).

²⁶ In *Muskopf v. Corning Hosp. Dist.*, 55 Cal. 2d 211, 359 P.2d 457, 11 Cal. Rptr. 89 (1961), the court concluded that government immunity from tort liability must be discarded as "mistaken and unjust." This decision reversed the long standing principle that government entities were immune from civil liability for their torts unless they were made liable by statute.

²⁷ See A. VAN ALSTYNE, CAL. GOVERNMENT TORT LIABILITY § 2.15 (Cal. Con't Ed. Bar 1964).

²⁸ There exists an apparent paradox between the reasoning of the California Supreme Court and the California Law Revision Commission with respect to their viewpoints on sovereign immunity. In *Muskopf v. Corning Hosp. Dist.*, 55 Cal. 2d 211, 213, 359 P.2d 457, 458, 11 Cal. Rptr. 89, 90 (1961), the court refers to government immunity from tort liability as an "anachronism . . . which has existed only by the force of inertia." On the other hand, the California Law Revision Commission refers to the liability imposed by the riot recovery statute as an "anachronism of modern law." 4 CAL. LAW REVISION COMM'N REPORTS, RECOMMENDATIONS & STUDIES 818 (1963).

²⁹ The spirit of *Muskopf v. Corning Hosp. Dist.*, 55 Cal. 2d 211, 359 P.2d 457, 11 Cal. Rptr. 89 (1961), is that the public convenience should not outweigh individual compensation when dealing with government tort liability.

³⁰ E.g., CAL. GOV'T CODE § 818.2 (West 1966), provides that a public entity is not liable for injury caused by adopting or failing to adopt an enactment or by failing to enforce any laws. See also *Martelli v. Pollock*, 162 Cal. App. 2d 655, 328 P.2d 795 (1958); and *Rubinow v. County of San Bernardino*, 169 Cal. App. 2d 67, 336 P.2d 968 (1959).

statutes bar recovery against public entities and their employees, where injury is caused by a negligent or intentional failure to enforce the law.³¹ This immunity effectively insulates governmental entities from responsibility for failure to protect California residents from mob violence. Consequently, California businessmen and property owners are left without recourse against any governmental entity, even where riot damages are the direct result of the government's wilful dereliction of duty.³² Apparently, the convenience of avoiding riot liability has out-weighted consideration for individual compensation. This abrupt reversal from strict liability to complete immunity deserves careful re-examination.

PRESENT REMEDIES

It is certainly reasonable that an innocent property owner³³ should not have to bear the entire burden of riot losses. However, the manner by which a riot victim receives compensation is open for consideration. As will be seen, there are several remedies available to the victim of riot losses. Unfortunately, a survey of such remedies reveals that they provide inadequate protection against damages caused by rioters.

Under California law the riot victim may have an avenue of recovery against the rioters themselves.³⁴ The specific actions of trespass, conversion, assault and battery offer the riot victim some protection. However, difficulties in the identification of rioters and the futility of a civil action against an indigent rioter render these remedies impractical.

Yet, direct recourse against the rioters is not the only remedy. A few states provide state compensation to the victims of crime.³⁵ California has such a compensation statute which offers limited protection to California citizens.³⁶ The purpose of the statute is to

³¹ *Id.*

³² *Id.*

³³ For purposes of this discussion an innocent party is one who is not contributorily negligent.

³⁴ *Cf.* the theory of joint tortfeasors in *Schaefer v. Berinstein*, 140 Cal. App. 2d 278, 295 P.2d 113 (1956).

³⁵ The following state laws are crime victim compensation statutes: HAWAII REV. LAWS ch. 351 (1968); MARYLAND ANN. CODE art. 26A (Supp. 1970); MASS. GEN. LAWS ch. 258 A. (1968); N.Y. EXEC. LAW §§ 620-35 (McKinney Supp. 1970).

³⁶ CAL. GOV'T CODE §§ 13960-66 (West Supp. 1971). This act provides that it is in the public welfare to indemnify needy California residents for injuries suffered as a result of the commission of crime; that a victim is one who is physically injured; that a claim should be filed with the State Board of Control; that the claim must be presented within one year of the date of injury or death; that the state has subrogation rights against criminals; that the State Board of Control shall give notice and have a hearing and determine whether to award an indemnification.

indemnify those "needy" residents of the state who are victims of crimes committed in California.³⁷ Basically, it provides that a victim who sustains personal injury as a result of a criminal act may be compensated; that the state has subrogation rights against the criminal;³⁸ that the Board of Control will determine whether compensation is appropriate;³⁹ and that \$5,000 is the maximum any victim may receive.⁴⁰ While the Crime Victim Act might in some instances protect a riot victim from the expense of personal injury, it would not protect most riot victims from property damage.⁴¹ Furthermore, before any compensation is awarded, the Board of Control must establish that the claimant is needy and that the injury suffered was the direct result of the commission of a crime.⁴² In addition to these requirements, the absolute limit of compensation under the act is \$5,000.⁴³ For these reasons, the Crime Victim Act does not provide adequate protection against riot damage to California citizens.

Another avenue of riot recovery may exist if the victim has extended coverage insurance which protects against riot damages.⁴⁴ Unfortunately, the weaknesses of the private insurance remedy are numerous. For example, the term "extended coverage" refers to coverage in addition to the standard insurance policy and, hence, normally involves additional cost.⁴⁵ Consequently, a home owner or businessman who cannot afford⁴⁶ an extended coverage endorsement may have no riot damage protection. While it is true that state regulations guard against unfair premiums, such regulations do not guarantee that insurance will be within the insured's means.⁴⁷ Indeed, there is considerable evidence which indicates that securing

³⁷ *Id.* § 13960.

³⁸ *Id.* § 13963.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ The thrust of the California Crime Victim Act is toward providing compensation for personal injuries. Compensation for damaged property may be given only if such damage occurred while the victim was acting to prevent the commission of a crime. *Id.* §§ 13960-74.

⁴² *Id.* § 13963.

⁴³ *Id.*

⁴⁴ *Meeting the Insurance Crisis of Our Cities*. A REPORT BY THE PRESIDENT'S NATIONAL ADVISORY PANEL ON INSURANCE IN RIOT-AFFECTED AREAS 19-20 (1968).

⁴⁵ *Id.* at 19.

⁴⁶ The report by the President's National Advisory Panel on Insurance states that consumer complaints about the high cost of property insurance were a recurring theme of their field interviews. It was also reported that many property owners in the urban core area pay two to three times the standard rates for insurance coverage and that rates may run as high as ten times the standard cost. *Id.* at 152-53.

⁴⁷ *Id.* at 48-49. Most states provide that insurance rates shall not be "excessive, inadequate, or unfairly discriminatory." However, state regulation does not guarantee that insurance will be within the insured's means. It merely serves to regulate rates so that the cost is not excessive in relation to the risk assumed by the company.

insurance protection is virtually impossible for sizable numbers of citizens.⁴⁸ In fact, the *President's National Advisory Panel on Insurance in Riot-Affected Areas* reported that insurance companies view the urban core market as undesirable business and generally endeavor to avoid it.⁴⁹ The high cost of riot coverage and the reluctance of the insurance industry to write insurance in high risk areas results in an unfair distribution of insurance protection. While it is true that steps have been taken to provide for greater availability of extended coverage insurance, these efforts represent only a partial solution to a larger problem. For instance, the Urban Property Protection and Reinsurance Act of 1968,⁵⁰ which encourages private industry to make insurance coverage available to people in urban areas, does nothing for those citizens who cannot afford the luxury of insurance. For these people and others,⁵¹ the only practical protection against riot damage lies with the government.

RE-EXAMINATION OF MUNICIPAL LIABILITY

For nearly a century, the California riot recovery statute played an important role⁵² in the protection of California residents against losses caused by riots. Yet today there is an apparent lack of protection for citizens against such losses.

Various arguments have been presented supporting municipal liability for riot losses.⁵³ The underlying theories supporting these arguments are based on two major principles: (a) protecting the individual property owner against riot losses for which there may be no other legal redress;⁵⁴ and (b) placing pressure on the local

⁴⁸ *Id.* at 53.

⁴⁹ *Id.* The report concludes that insurance is difficult to obtain because the insurance industry makes an effort to avoid urban core business.

⁵⁰ 12 U.S.C. §§ 1749bbb, 1749bbb-21 (1968). This statute is commonly called the Urban Property Protection and Reinsurance Act of 1968. It provides government reinsurance for companies who qualify and will write high risk insurance in areas where insurance is normally difficult to obtain.

⁵¹ Many California citizens cannot secure insurance coverage because their coverage has been cancelled or because they live in an area where new insurance coverage is not offered. See note 48 *supra*.

⁵² While the California riot recovery statute saw little use in its near one hundred year history, it did nevertheless afford protection to all California citizens. See e.g., *Agudo v. County of Monterey*, 13 Cal. 2d 285, 89 P.2d 400 (1939); *Bank of California v. Shaber*, 55 Cal. 322 (1880); *Clear Lake Water Works Co. v. Lake County*, 45 Cal. 90 (1872); *Fong Yuen Ling, Sam Yuen, Yin Tuck and Ah Yung v. The Mayor and Common Council of the City of Los Angeles*, 47 Cal. 531 (1874).

⁵³ See David, *Municipal Liability in Tort in California*, 7 So. CAL. L. REV. 372 (1934).

⁵⁴ In *City of Madisonville v. Bishop*, 113 Ky. 106, 67 S.W. 269 (1902), the court states that protecting the individual from loss due to riots is a principle purpose underlying riot recovery statutes. *Accord*, *Roy v. Hampton*, 108 N.H. 51, 226 A.2d 870 (1967).

governmental body to maintain the highest degree of law and justice so as to minimize its liability for damage.⁵⁵ Among the chief arguments against municipal liability for riot losses are the following: (a) liability does not promote a high degree of law and order; (b) private insurance coverage is sufficient; and (c) municipal riot liability may be too expensive for municipalities. In order to understand the value of municipal riot liability, some study must be given to the arguments against such liability.

While there are no studies which prove that municipal liability for riot losses pressures local government to maintain a high degree of law and justice, it seems logical that liability would have such an effect. Implicit in this argument is the notion that local taxpayers will stimulate local authorities toward the solution of existing social problems which invariably lead to violence.⁵⁶ Local governmental riot liability would serve as a deterrent to riots because it places the expense of riot losses squarely on the shoulders of the local taxpayer. Consequently, local taxpayers, in order to avoid the additional tax burdens resulting from riot damage, are encouraged to become involved in the community by dealing with problems which might lead to mob violence.

The next major criticism of municipal riot liability suggests that private insurance offers sufficient protection against damage caused by riots. This argument is entirely inadequate because a significant number of persons cannot secure insurance protection.⁵⁷ For this group of people there is little, if any, practical recourse⁵⁸ for riot losses and, in effect, they are left at the mercy of the mob.⁵⁹

The final argument against municipal riot liability deserves careful consideration. This argument suggests that liability for riot losses is potentially too costly for local governments, especially in large cities where there is a shift in population and wealth to the suburbs. However, the question of potential expense is really a question of statutory regulation because the extent of municipal riot liability can be carefully controlled.⁶⁰ For example, municipal riot

⁵⁵ In *Valenezian v. City of Boston*, 238 Mass. 596, 131 N.E. 220 (1921), the court indicates that a purpose of local government riot liability is to place pressure on the local government to maintain a high degree of law and order. *Accord*, *City of Madisonville v. Bishop*, 113 Ky. 106, 67 S.W. 269 (1902).

⁵⁶ See, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, (1968), for a study of riots and their causes.

⁵⁷ See notes 48, 49 & 50 *supra*.

⁵⁸ Difficulties in the identification of rioters and the possibility of indigent rioters make civil actions in trespass, conversion, assault and battery generally ineffective.

⁵⁹ This situation is especially unfortunate in California where residents have enjoyed riot recovery protection for nearly a century.

⁶⁰ California presents an extreme example of how well legislation can protect

liability could be limited by statutory provision to a fixed percentage of the actual loss suffered, as is the case in Maine.⁶¹ Or municipalities could be given subrogation rights against the rioters themselves, as is specifically allowed in Maine, Massachusetts, Missouri, Ohio, Rhode Island and Wisconsin.⁶² Further, protection could be given the municipality by limiting recovery to situations where the city is negligent in its duties,⁶³ or where notice of impending danger is given to the city.⁶⁴ Therefore, since the extent of riot liability can be carefully limited by statute, the argument against municipal liability on the grounds of expense is poorly reasoned and contrary to past experience.⁶⁵

PROPOSALS FOR NEW LEGISLATION

Because the arguments against municipal riot liability appear weak in contrast to the effective relief afforded by a riot recovery statute,⁶⁶ the question arises as to what type of legislation would best serve the interests of California residents.

The repealed California strict liability riot statute was perhaps too sweeping in the liability which it imposed upon municipal and county governments.⁶⁷ For this reason, new state legislation could be drafted to protect local government from over-extended liability. This might be achieved by limiting recovery to 75 percent of the actual losses suffered, and providing a \$50 deductible clause, as is done in Massachusetts.⁶⁸ Such provisions have the two-fold effect of providing a remedy against catastrophic loss for riot victims while protecting the municipality against limitless liability. Similarly, a provision granting subrogation rights to the city against individual rioters⁶⁹ would act to protect both the public and the financial

the government from unwanted liability. However, it seems only fair that local government entities should accept liability where their negligence has directly caused the damages suffered.

⁶¹ ME. REV. STAT. ANN. tit. 17, § 3354 (1964).

⁶² ME. REV. STAT. ANN. tit. 17, § 3354 (1964); MASS. ANN. LAWS ch. 269, § 8 (1958); MO. ANN. STAT. § 537-150 (1949); OHIO REV. CODE ANN. § 3761.08 (Supp. 1970); R.I. GEN. LAWS ANN. § 45-15-13 (1956); WIS. STAT. ANN. § 66.091 (1970).

⁶³ This limitation on recovery is seen in the following statutes: CONN. GEN. STAT. ANN. § 7-108 (1958); MD. ANN. CODE art. 82, §§ 1-3 (1957); KAN. GEN. STAT. ANN. § 12-203 (Supp. 1968); KY. REV. STAT. ANN. § 411.100 (1942).

⁶⁴ Such a provision would protect the municipality from liability for riot damage for which it had no previous warning and thus no way of knowing that protection was needed.

⁶⁵ There have been few reported cases where the California riot recovery statute was used as the basis for recovery. For a listing of these cases, see note 51 *supra*.

⁶⁶ See notes 54 & 55 *supra*.

⁶⁷ See CAL. GOV'T CODE § 50140-45 (West 1954), *repealed*, CAL. STATS. 1963 ch. 1681 § 18, at 3266 (1963).

⁶⁸ MASS. ANN. LAWS ch. 269, § 8 (1968).

⁶⁹ WIS. STAT. ANN. ch. 66, § 66.091 (1965), has such a subrogation clause.

integrity of the municipality. Such a provision would also insure renewed diligence on the part of law enforcement in the investigation and arrest of rioters.

However, such proposals alone are not enough. The problem of nationwide riot damages and the grievances underlying their occurrence indicate that riot recovery legislation is a nationwide concern.⁷⁰ In the last few years federal involvement in the control of criminal activity and its underlying causes has been the subject of considerable legislation.⁷¹ Against this background it is entirely appropriate that the federal government enact legislation protecting United States residents against losses caused by riots.

The structure of federal riot legislation could be modeled after the following example:

Section 1. Declaration of Purpose.

The Congress hereby declares that it is in the public's best interest and welfare to indemnify innocent residents of the United States against personal injury and property damage caused by riots within the United States.

Section 2. Victim of Riot Defined.

A victim of riot damage as used in this legislation is any United States resident who suffers either personal injury or property damage as a direct consequence of riot activity.

A. For purpose of this legislation, an innocent United States resident is one who is not contributorily negligent respecting the damages suffered.

Section 3. Riot Defined.

For purposes of this legislation, a riot is defined as any use of force or violence disturbing the public peace by five or more persons acting together without authority of law.

Section 4. Administration of the Act.

A Federal Riot Recovery Commission is created by this act to hear and award claims of United States residents seeking relief from riot losses. The Federal Riot Recovery Commission shall be a three member tribunal appointed by the President with the advice and consent of the Senate.

Section 5. Filing of Claim; Report of Attorney General; Amount of Recovery.

Upon presentation of a claim of riot injury, the Federal Riot

⁷⁰ Riot recovery legislation is properly a national concern because many of the problems underlying riots are national in scope. For example, the war in Southeast Asia, civil rights and equal opportunity for minority groups are problems which cannot be solved by local governments alone.

⁷¹ See, e.g., The Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. §§ 3701-3781 (1968), which is federal legislation concerned with the control of criminal activity throughout the nation. See also The Economic Opportunity Act of 1964, 42 U.S.C. §§ 2701-2994 (1964), which seeks to improve the social conditions which lead to criminal activity.

Recovery Commission shall fix a time and place for the hearing of the claim, and send notice thereof to interested parties and to the United States Attorney General. Prior to such hearing, the United States Attorney General shall investigate the facts of each claim. At the hearing the Attorney General shall submit to the commission evidence showing:

- A. The nature of the circumstances involved;
- B. The direct relationship between riot activity and the losses complained of;
- C. The extent of injury; and
- D. Other evidence as the board may require. The Federal Riot Recovery Commission will then reach a decision concerning the amount of award, if any. The Commission may reduce the award to the extent that the claimant has received indemnification from any other source.

Section 6. *Mutuality of Federal and Local Liability.*

Under this act, the federal government shares liability for riot losses with the municipality or municipalities within whose boundaries the damage complained of occurred. A municipality's annual liability under this act shall not exceed five percent of the municipality's annual tax revenues. The remaining cost of riot recovery shall be assumed by the federal government.

Section 7. *Subrogation Rights and Payment of Claims.*

If a claim is paid under this act, the municipal government(s) shall be subrogated to the rights of the claimant to whom such claim was paid.

Federal payment of awards under this act shall be paid from a separate appropriation made to the Federal Riot Recovery Commission from the federal budget. Municipal payment of awards under this act shall be paid out of existing revenues or by the levy and collection of taxes for payment of awards.

The purpose of such federal legislation is to guarantee adequate protection to all innocent victims against riots and to act as a deterrent against their occurrence. Such a deterrent effect is best achieved by making the local governmental entity mutually liable with the federal government for riot losses.⁷² The liability imposed on local governments would, however, be limited to a small percentage of the local entity's yearly tax revenues. Such a measure protects local government from limitless liability while preserving the riot deterrent effect which only local liability can produce.

Aside from the fact that federal legislation could provide complete protection to riot victims and act to deter the occurrence

⁷² The deterrent effect is only brought about when the local community is aware of its liability for riot losses and therefore, as a means of escaping such liability, sets up machinery to solve grievances which might lead to riots. If there is no special local government liability for riot losses, then there is no financial threat which will stimulate community involvement.

of future riots, other benefits would also be achieved. For example, the basic expense of riot compensation would be spread among the largest number of persons, thus reducing the costliness of riot damages for everyone concerned. Moreover, such a program of shared responsibility between the federal and local governments would serve to generate greater cooperation in such areas as grievance machinery, police training and riot control techniques. The apparent benefits accruing from federal riot recovery legislation make such legislation a necessity to the public interest. In fact, the moral obligation of the federal government in the protection of innocent riot victims is at least as compelling as its duty in the capture and punishment of criminals. For these reasons, a federal riot compensation act, as outlined earlier, should be enacted for the protection of innocent United States residents against riot losses.

CONCLUSION

Presently in California and other states, millions of innocent citizens are unprotected against potential damage caused by riots. In many states there exists no governmental liability for losses incurred through riots because such liability is not part of the common law and must be established by statute.⁷³ Frequently, other legal avenues of recovery prove to be impractical and ineffective.⁷⁴ Furthermore, the commercial insurance remedy is inadequate because many persons cannot afford it or because it is simply not available in their geographical area.⁷⁵ Consequently, the innocent victims of riot damage must look to the equitable hand of government to protect their interests against the destructiveness of mob violence.

Robert H. Harmssen

⁷³ See notes 8 & 9 *supra*.

⁷⁴ See text accompanying notes 33-51 *supra*.

⁷⁵ See notes 47, 48 & 49 *supra*.